



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-75,266-04

EX PARTE ROSA ESTELA OLVERA JIMENEZ, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. D-1-DC-04-904165-D IN THE 299TH DISTRICT COURT
FROM TRAVIS COUNTY

Per curiam. KELLER, P.J., YEARY and KEEL JJ. dissented.

OPINION

Applicant was convicted of one count of murder and one count of injury to a child and sentenced to 99 years' imprisonment. The Third Court of Appeals affirmed her conviction. *Jimenez v. State*, 240 S.W.3d 384 (Tex. App. 2007). Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends that she is actually innocent. She also claims her due process rights were violated because the State presented false and misleading testimony during her trial and there is a reasonable likelihood that the false and misleading testimony affected the jury's decision. Based on the record, the trial court has determined that Applicant has established by clear and convincing

evidence that she is actually innocent and that she was convicted on the basis of false testimony.

While we do not agree that Applicant has established affirmative evidence exists of her actual innocence, we do agree she is entitled to relief on false testimony. Relief is granted. *Ex parte Chabot*, 300 S.W.3d 768, 772 (Tex. Crim. App. 2009). The judgment in cause number D-1-DC-04-904165 in the 299th District Court of Travis County is set aside, and Applicant is remanded to the custody of the Sheriff of Travis County to answer the charges as set out in the indictment. The trial court shall issue any necessary bench warrant within ten days from the date of this Court's mandate.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice—Correctional Institutions Division and the Board of Pardons and Paroles.

Delivered: May 31, 2023
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